

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Bankruptcy Judge

Sacramento, California

February 8, 2022 at 1:30 p.m.

1.	21-23900 -C-13	MAURICE RHODENNASH	OBJECTION TO DEBTOR'S CLAIM OF
	RDG-2	Pro Se	EXEMPTIONS
			12-22-21 [27]

Final Ruling: No appearance at the February 8, 2022 hearing is required.

The Objection has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 48 days' notice was provided. Dkt. 30.

No opposition has been filed. Therefore, the court enters the defaults of the non-responding parties in interest, finds there are no disputed material factual issues, and determines the matter will be resolved without oral argument. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995); *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

The Objection to Claimed Exemptions is sustained, and the exemptions claimed are disallowed in their entirety.

The Chapter 13 trustee filed this Objection to the debtor's claimed exemptions because the debtor utilizes both California Code of Civil Procedure section 704, *et seq.*, and 11 U.S.C. § 522.

The trustee argues that the debtor's petition shows residence in Sacramento County and no other residence in the prior 3 years. A review of the record confirms this argument.

Additionally, Schedule C claims "100% of fair market value, up to any applicable statutory limit" is exempt instead of providing specific dollar amounts.

The Trustee's Objection is sustained, and the claimed exemptions are disallowed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Claimed Exemptions filed by the

February 8, 2022 at 1:30 p.m.

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Chapter 13 trustee Russell D. Greer having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection is sustained, and the debtor's claimed exemptions are disallowed in their entirety.

2. [21-24204](#)-C-13 MARIA DEL SOCORRO ORTIZ MOTION FOR RELIEF FROM
[ETW](#)-1 Peter Macaluso AUTOMATIC STAY AND/OR MOTION TO
CONFIRM TERMINATION OR ABSENCE
OF STAY
1-3-22 [[17](#)]

YULI HU VS.

Thru #4

No Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 36 days' notice was provided. Dkt. 22.

The Motion for Relief from the Automatic Stay is xxxxxx.

Creditor Yuli Hu ("Movant") filed this Motion seeking relief from the automatic stay as to its collateral, the debtor's real property commonly known as 7566 Phoenix Park Drive, Sacramento, California. The Motion represents that Movant's claim of \$132,465.67 fully matured on October 1, 2020.

Movant argues cause for relief from stay exists pursuant to 11 U.S.C. § 362(d)(1) because the debtor is not able to propose and fund a confirmable Chapter 13 plan.

Movant also argues cause exists pursuant to 11 U.S.C. § 362(d)(4) because the case was filed in bad faith to cause delay, evinced by multiple recent filings, inability to make plan payments, and the debtor's need to request that the filing fee be paid in installments.

DEBTOR'S OPPOSITION

The debtor filed an Opposition on January 24, 2022. Dkt. 43. The debtor argues that she is current on plan payments, and that there is \$90,000.00 equity cushion in the real property to offer adequate protection to the Movant.

DISCUSSION

Movant's Relief From Stay Summary Sheet (Dkt. 19) concedes there is \$91,425.66 in equity in the debtor's real property.

At the hearing, xxxxxxxxxxxxxxxx

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from the Automatic Stay filed by Yuli Hu ("Movant") having been presented to the court,

and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is ~~xxxxxxxxxxxxxx~~

3. [21-24204](#)-C-13 MARIA DEL SOCORRO ORTIZ CONTINUED MOTION TO EXTEND
[PGM](#)-1 Peter Macaluso AUTOMATIC STAY
12-22-21 [[10](#)]

No Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 20 days' notice was provided. Dkt. 14.

The Motion to Extend the Automatic Stay is ~~XXXXXX~~

The debtor Maria del Socorro Ortiz ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case was dismissed on November 18, 2021, after she failed to cure a substantial delinquency or file a modified plan. Order, Bankr. E.D. Cal. No. 20-25492, Dkt. 127. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

The Declaration supporting the Motion explains that the change in circumstances between this and the most recent case is that this is no longer a joint case with the debtor's spouse, Rene Ortiz. The Declaration also gives a summary of the debtor's current income and expenses.

CREDITOR'S OPPOSITION

Creditor Yuli Hu ("Creditor") filed an Opposition on December 30, 2021, arguing that the debtor has not sufficiently explain why her prior case failed, and has not presented evidence showing this case will be any more successful. Dkt. 16.

DEBTOR'S REPLY

Debtor filed a Reply and supplemental declaration on January 7, 2022. Dkts. 31-33. The supplemental pleadings reiterate that the prior case failed because the debtor's spouse was involved, and that the present case will be successful because the Debtor filed without Rene Ortiz.

Debtor also filed the Declaration of Ryun Ortiz, one of her sons, to present testimony that he and two of his brother can contribute money towards the Debtor's plan and will if necessary.

**ORDER GRANTING MOTION ON
INTERLOCUTORY BASIS**

After the prior hearing, the court issued an Order extending the stay through February 8, 2022, on an interlocutory basis pending further hearing. Dkt. 41.

APPLICABLE LAW

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to Debtor**, and nothing more. In 11 U.S.C. § 362(c)(4), Congress expressly provides that the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtor. The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); see also Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-10 (2008). An important indicator of good faith is a realistic prospect of success in the second case, contrary to the failure of the first case. See, e.g., *In re Jackola*, No. 11-01278, 2011 Bankr. LEXIS 2443, at *6 (Bankr. D. Haw. June 22, 2011) (citing *In re Elliott-Cook*, 357 B.R. 811, 815-16 (Bankr. N.D. Cal. 2006)). Courts consider many factors—including those used to determine good faith under §§ 1307(c) and 1325(a)—but the two basic issues to determine good faith under § 362(c)(3) are:

- A. Why was the previous plan filed?
- B. What has changed so that the present plan is likely to succeed?

In re Elliot-Cook, 357 B.R. at 814-15.

DISCUSSION

After the prior hearing the debtor filed the Declaratiuons of Quinten Ortiz and Andrew Ortiz. Dkts. 39 & 40. The declarations attest to voluntary contribution by two of the debtor's sons, and represent that the debtor's non-filing spouse is no longer in control of the family finances.

At the hearing, xxxxxxxxxxxxxxxx

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Extend the Automatic Stay filed by

Maria del Socorro Ortiz having been presented to the court,
and upon review of the pleadings, evidence, arguments of
counsel, and good cause appearing,

IT IS ORDERED that the Motion is **xxxxxxxxxxxx**

4. [21-24204](#)-C-13 MARIA DEL SOCORRO ORTIZ OBJECTION TO CONFIRMATION OF
[ETW](#)-2 Peter Macaluso PLAN BY CREDITOR YULI HU
1-3-22 [[23](#)]

No Tentative Ruling:

The Notice purports to set the Objection pursuant to has been set on Local Rule 9014-1(f)(1) notice. Dkt. 24.

Local Bankruptcy Rule 3015(c)(4) provides that objections to confirmation shall comply with Local Rule 9014-1(f)(2). Furthermore, Local Bankruptcy Rule 3015(c)(4) provides that "objection shall be set for hearing on the confirmation hearing date and time designated in the *Notice of Chapter 13 Bankruptcy Case*."

The Notice of Chapter 13 Bankruptcy Case specified that objections to confirmation should be set for March 8, 2022, hearing. Dkt. 29. Therefore, the present Objection was set prematurely.

The Objection to Confirmation of Plan is XXXXXX

Creditor Yuli Hu ("Creditor") opposes confirmation of the Chapter 13 plan on the basis that the debtor has failed to provide proof of insurance on the debtor's residence; the debtor has not provided for delinquent property taxes; and the debtor has not demonstrated that the plan is feasible given prior cases that were not successful.

DEBTOR'S REPLY

The debtor filed a Reply on January 24, 2022. Dkt. 45. The debtor argues that the order confirming plan can specify the full amount of Creditor's claim, and that the plan is feasible after a \$315 increase to the monthly payment.

DISCUSSION

At the hearing, xxxxxxxxxxxxxxxx

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by Yuli Hu, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is xxxxxxxxxx

5. [21-23914](#)-C-13 DAVID CASTRO OBJECTION TO CONFIRMATION OF
[AP-1](#) Mikalah Liviakis PLAN BY WELLS FARGO BANK, N.A.
12-10-21 [[13](#)]

Final Ruling: No appearance at the February 8, 2022 hearing is required.

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 60 days' notice was provided. Dkt. 15.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

The Objection to Confirmation of Plan is sustained.

Creditor Wells Fargo Bank, N.A. ("Creditor") opposes confirmation of the Chapter 13 plan on the basis that:

1. The plan does not provide for Creditor's prepetition arrearages.
2. When accounting for the increased payment necessary to pay \$20,973.68 in prepetition arrearages, the plan is not feasible.

DISCUSSION

On January 17, 2022, the debtor filed an Amended Plan. Therefore, the Objection shall be sustained.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by Wells Fargo Bank, N.A., having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is sustained, and the debtor's proposed Chapter 13 plan (Dkt. 3) is not confirmed.

6. [21-23914](#)-C-13 DAVID CASTRO
[RDG](#)-1 Mikalah Liviakis

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
1-10-22 [[18](#)]

Final Ruling: No appearance at the February 8, 2022 hearing is required.

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 29 days' notice was provided. Dkt. 21.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

The Objection to Confirmation of Plan is sustained.
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The Chapter 13 Trustee, Russell Greer ("Trustee"), filed this Objection opposing confirmation on multiple grounds.

Thereafter, on January 17, 2022, the debtor filed an Amended Plan. Therefore, the Objection shall be sustained.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, Russell Greer, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is sustained, and the debtor's proposed Chapter 13 plan (Dkt. 3) is not confirmed.

7. [20-21420](#)-C-13 MARK/MONICA POWERS
[NLL](#)-1 Gary Fraley

MOTION FOR RELIEF FROM
AUTOMATIC STAY
1-7-22 [[68](#)]

M&T BANK VS.

Final Ruling: No appearance at the February 8, 2022 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 32 days' notice was provided. Dkt. 73.

No opposition has been filed. Therefore, the court enters the defaults of the non-responding parties in interest, finds there are no disputed material factual issues, and determines the matter will be resolved without oral argument. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995); *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

The Motion for Relief from the Automatic Stay is granted.

M&T Bank as Attorney in Fact for Lakeview Loan Servicing, LLC ("Movant") filed this Motion seeking relief from the automatic stay as to the debtors' property located at 9246 Thoroughbred Way, Elk Grove, California (the "Property")

Movant argues cause for relief from stay exists pursuant to 11 U.S.C. § 362(d)(1) because the debtors are delinquent 3 postpetition and 10 prepetition payments. Declaration, Dkt. 70.

DISCUSSION

Upon review of the record, the court finds cause for relief from stay exists pursuant to 11 U.S.C. § 362(d)(1) because the debtors are delinquent 3 postpetition payments. Declaration, Dkt. 70. A review of the record shows the trustee has filed a Notice of Default And Intent To Dismiss Case. Dkt. 66. The Notice reports a \$5,706.00 plan payment delinquency as of December 7, 2021, with another \$2,853.00 coming due the 25th of every month.

Therefore, the Motion is granted.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. While Movant requests relief from this stay within its prayer for relief, no reason for

the requested relief is proffered. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from the Automatic Stay filed by M&T Bank as Attorney in Fact for Lakeview Loan Servicing, LLC ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 9246 Thoroughbred Way, Elk Grove, California, ("Property") to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived.

No other or additional relief is granted.

Thru #9

Tentative Ruling:

The Objection has been set on Local Rule 3007-1(b)(2) procedure which requires 30 days' notice. The Proof of Service shows that 35 days' notice was provided. Dkt. 57.

The Objection to Proof of Claim is sustained, and the claim is disallowed in its entirety.

The Chapter 13 trustee filed this Objection arguing that Proof of Claim, No. 6, filed by AT&T was filed late and should be disallowed.

The deadline for filing proofs of claim in this case is March 20, 2020. Notice of Bankruptcy Filing and Deadlines, Dkt. 37. The Proof of Claim subject to this Objection was filed on December 1, 2021.

Based on the evidence before the court, the court finds the creditor's claim was filed untimely. The Objection to the Proof of Claim is sustained, and the claim is disallowed in its entirety.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Claim filed in this case by the Chapter 13 trustee, Russell D. Greer, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 6 of AT&T is sustained, and the claim is disallowed in its entirety.

Tentative Ruling:

The Objection has been set on Local Rule 3007-1(b) (2) procedure which requires 30 days' notice. The Proof of Service shows that 35 days' notice was provided. Dkt. 60.

The Objection to Proof of Claim is sustained, and the claim is disallowed in its entirety.

The Chapter 13 trustee filed this Objection arguing that Proof of Claim, No. 7, filed by Verizon was filed late and should be disallowed.

The deadline for filing proofs of claim in this case is March 20, 2020. Notice of Bankruptcy Filing and Deadlines, Dkt. 37. The Proof of Claim subject to this Objection was filed on December 1, 2021.

Based on the evidence before the court, the court finds the creditor's claim was filed untimely. The Objection to the Proof of Claim is sustained, and the claim is disallowed in its entirety.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Claim filed in this case by the Chapter 13 trustee, Russell D. Greer, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 7 of Verizon is sustained, and the claim is disallowed in its entirety.

10. [21-23748](#)-C-13 ELISA VALENZUELA
[RDG](#)-1 Julius Cherry

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY RUSSELL
D. GREER
12-20-21 [[14](#)]

Tentative Ruling:

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 22 days' notice was provided. Dkt. 17.

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, Russell Greer ("Trustee"), opposes confirmation of the Chapter 13 plan on the basis that the debtor has not appeared at the 341 Meeting.

DISCUSSION

The court continued the hearing on this Objection to allow the debtor to appear at the continued 341 Meeting.

A review of the docket shows that while counsel appeared at the most recent continued 341 Meeting, the debtor did not.

Appearance is mandatory. See 11 U.S.C. §§ 343 & 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Therefore, the Objection shall be sustained.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, Russell Greer, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is sustained.

Final Ruling: No appearance at the February 8, 2022 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 36 days' notice was provided. Dkt. 47.

No opposition has been filed. Therefore, the court enters the defaults of the non-responding parties in interest, finds there are no disputed material factual issues, and determines the matter will be resolved without oral argument. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995); *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

The Motion to Approve Loan Modification is granted.

The debtor Naoupu Feleai Laloulu filed this Motion seeking authority to incur debt in the form of a loan modification.

The proposed financing is in the principal amount of \$87,047.06, paid at 2.875 percent interest over a 30 year term. Monthly payments are proposed to be \$361.15.

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the Motion is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Approve Loan Modification filed by Naoupu Feleai Laloulu having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted. The debtor's counsel shall prepare an appropriate order granting the Motion, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved submit the proposed order to the court.

12. [21-23869](#)-C-13 TERANCE WILLIAMS
[RDG](#)-1 David Foyil

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
1-4-22 [[30](#)]

Final Ruling: No appearance at the February 8, 2022 hearing is required.

The Objection is dismissed without prejudice.

On January 27, 2022, the Movant filed an Ex Parte Motion to Dismiss. Dkt. 37. Federal Rule of Civil Procedure 41(a)(2), incorporated by Federal Rules of Bankruptcy Procedure 9014 and 7041, allows dismissal after a responsive pleading has been filed on terms the court considers proper.

The court finds withdrawal is warranted here. The Objection is dismissed without prejudice, and the court removes this Objection from the calendar.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The objection filed by the Chapter 13 trustee Russell Greer having been presented to the court, the movant having requested that the Objection itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Debtor's Claim of Exemptions is dismissed without prejudice.

13. [21-22810](#)-C-13 EFRAIN RODRIGUEZ
[SLE](#)-2

MOTION TO SET ASIDE DISMISSAL
OF CASE O.S.T.
1-31-22 [[48](#)]

DEBTOR DISMISSED: 01/27/2022

No Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(3) shortened notice procedure. Dkt. 54.

The Motion to Vacate Dismissal is ~~XXXXXXXXXXXX~~

The debtor filed this Motion seeking to vacate the court's Order (Dkt. 45) granting the trustee's Motion To Dismiss and dismissing the case.

The court issued that Order after the trustee's dismissal Motion was unopposed at the January 25, 2022, hearing. Dkt. 44.

The Motion represents that (1) the debtor has always been current on plan payments; (2) the case was dismissed for failure to confirm a plan; (3) counsel for the debtor has had significant office function issues due to COVID and employee retirements; and (4) counsel for the debtor had a hearing in Department E's law & motion calendar at the same time, and mistakenly believed Department C's calendar would be heard in the same courtroom.

APPLICABLE LAW

Federal Rule of Civil Procedure Rule 60(b), as made applicable by Federal Rule of Bankruptcy Procedure 9024, governs the reconsideration of a judgment or order. Grounds for relief from a final judgment, order, or other proceeding are limited to:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

FED. R. CIV. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199, 1203

(5th Cir. 1993). The court uses equitable principles when applying Rule 60(b). See 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2857 (3d ed. 1998). The so-called catch-all provision, Federal Rule of Civil Procedure 60(b)(6), is "a grand reservoir of equitable power to do justice in a particular case." *Uni-Rty Corp. V. Guangdong Bldg., Inc.*, 571 F. App'x 62, 65 (2d Cir. 2014) (citation omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, relief under Rule 60(b)(6) may be granted in extraordinary circumstances. *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 & n.11 (1988).

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts that, if taken as true, allow the court to determine if it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶¶ 60.24[1]-[2] (3d ed. 2010); see also *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

Additionally, when reviewing a motion under Rule 60(b), courts consider three factors: "(1) whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default." *Falk*, 739 F.2d at 463 (citations omitted).

Another consideration is the importance of finality of judgments. The standard for determining whether a Rule 60(b)(1) motion is filed within a reasonable time is a case-by-case analysis. The analysis considers "the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties." *Gravatt v. Paul Revere Life Ins. Co.*, 101 F. App'x 194, 196 (9th Cir. 2004) (citations omitted); *Sallie Mae Servicing, LP v. Williams (In re Williams)*, 287 B.R. 787, 793 (B.A.P. 9th Cir. 2002) (citation omitted).

DISCUSSION

The court's Order Shortening Time On Motion To Vacate Dismissal specified that "the motion to vacate dismissal will be DENIED at that time unless a plan satisfactory to the chapter 13 trustee is provided to the chapter 13 trustee by Noon, February 7, 2022." Dkt. 54.

At the hearing, **XXXXXXXXXXXXXX**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Vacate filed by Efrain Aguilar Rodriguez having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is **XXXXXXXXXXXXXX**

14. [21-23133](#)-C-13 OLGA MONTERO
[SLE](#)-1

MOTION TO SET ASIDE DISMISSAL
OF CASE O.S.T.
2-1-22 [[41](#)]

DEBTOR DISMISSED: 01/27/2022

No Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(3) shortened notice procedure. Dkt. 47.

The Motion to Vacate Dismissal is ~~XXXXXXXXXXXX~~

The debtor filed this Motion seeking to vacate the court's Order (Dkt. 38) granting the trustee's Motion To Dismiss and dismissing the case.

The court issued that Order after the trustee's dismissal Motion was unopposed at the January 25, 2022, hearing. Dkt. 37.

The Motion represents that (1) the debtor has always been current on plan payments; (2) the case was dismissed for failure to confirm a plan; (3) counsel for the debtor has had significant office function issues due to COVID and employee retirements; and (4) counsel for the debtor had a hearing in Department E's law & motion calendar at the same time, and mistakenly believed Department C's calendar would be heard in the same courtroom.

APPLICABLE LAW

Federal Rule of Civil Procedure Rule 60(b), as made applicable by Federal Rule of Bankruptcy Procedure 9024, governs the reconsideration of a judgment or order. Grounds for relief from a final judgment, order, or other proceeding are limited to:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

FED. R. CIV. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199, 1203

(5th Cir. 1993). The court uses equitable principles when applying Rule 60(b). See 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2857 (3d ed. 1998). The so-called catch-all provision, Federal Rule of Civil Procedure 60(b)(6), is "a grand reservoir of equitable power to do justice in a particular case." *Uni-Rty Corp. V. Guangdong Bldg., Inc.*, 571 F. App'x 62, 65 (2d Cir. 2014) (citation omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, relief under Rule 60(b)(6) may be granted in extraordinary circumstances. *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 & n.11 (1988).

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts that, if taken as true, allow the court to determine if it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶¶ 60.24[1]-[2] (3d ed. 2010); see also *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

Additionally, when reviewing a motion under Rule 60(b), courts consider three factors: "(1) whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default." *Falk*, 739 F.2d at 463 (citations omitted).

Another consideration is the importance of finality of judgments. The standard for determining whether a Rule 60(b)(1) motion is filed within a reasonable time is a case-by-case analysis. The analysis considers "the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties." *Gravatt v. Paul Revere Life Ins. Co.*, 101 F. App'x 194, 196 (9th Cir. 2004) (citations omitted); *Sallie Mae Servicing, LP v. Williams (In re Williams)*, 287 B.R. 787, 793 (B.A.P. 9th Cir. 2002) (citation omitted).

DISCUSSION

The court's Order Shortening Time On Motion To Vacate Dismissal specified that "the motion to vacate dismissal will be DENIED at that time unless a plan satisfactory to the chapter 13 trustee is provided to the chapter 13 trustee by Noon, February 7, 2022." Dkt. 47.

At the hearing, **XXXXXXXXXXXXXXXXXX**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Vacate filed by Olga Rosa Montero having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is **XXXXXXXXXXXXXXXXXX**